

JAN 14 2019

AMY J HUNLEY  
CLERK OF SUPERIOR COURT  
By \_\_\_\_\_ Deputy

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF COCHISE

STATE OF ARIZONA,	)	
	)	
Plaintiff,	)	<b>PLEA AGREEMENT</b>
	)	
vs.	)	CR201800693
	)	
<b>CLARENCE WALL</b>	)	
	)	
Defendant.	)	

**The State of Arizona and the Defendant hereby agree to the following disposition of this case:**

**PLEA: The Defendant shall plead guilty to:**

**COUNT 1 OF PLEA AGREEMENT**

On or about October 31, 2017, **CLARENCE WALL** committed **FAILURE TO STOP** by being the driver of a vehicle in an accident resulting in injury to a person immediately stopping the vehicle at the scene of the accident or as close to the accident scene as possible and remaining at the scene of the accident until he fulfilled the requirements of A.R.S. § 28-663, and **CLARENCE WALL** caused the accident, all in violation of A.R.S. §§ 28-661, 13-105, 13-701, 13-702, and 13-801, a class 2 felony.

**This is a non-dangerous, non-repetitive offense.**

1. **SENTENCING RANGE:** The crime charged in Count 1 of this plea agreement carries a **presumptive** term of imprisonment in the Department of Corrections of 5 years; a **minimum** term of 4 years; a **mitigated** term of 3 years; a **maximum** term of 10 years; and an **aggravated** term of 12.5 years. The **maximum** fine that can be imposed is \$150,000 plus 83% surcharge.

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2. **PROBATION: Probation IS NOT available as to Count 1.** Whether or not Defendant's sentence is suspended and Defendant is placed on probation is within the sole discretion of the Court. Unless otherwise stated within the Stipulation/Recommendations Regarding Sentences section of this agreement, there is no agreement the State will recommend or stipulate Defendant be granted probation. If granted probation, Defendant can be sentenced up to one year in the County jail as a condition of probation, and probation will be either standard supervision or intensive probation supervision (IPS) unless otherwise stipulated by the parties within this agreement. If granted probation, the terms and conditions thereof are subject to modification at any time during the period of probation in the event Defendant violates any written condition of her probation. Defendant agrees to execute a Waiver of Extradition in connection with any probation revocation proceedings required in the event that her violation of any term or condition of probation, if probation is granted, results in the filing of a Petition to Revoke such probation. Defendant further agrees to reimburse any law enforcement agency for the expense of bringing her back from any other State, County, or Correctional Facility for any proceeding in connection with this case.

*CW*

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3. **COMMUNITY SUPERVISION:** If the Defendant is sentenced to prison, the Defendant must serve at least eighty-five percent (85%) of the sentence imposed. The Defendant shall also be sentenced to serve a term of community supervision equal to one-seventh of the prison term to be served following to the actual period of imprisonment. If the Defendant fails to abide by the conditions of community supervision, the Defendant can be required to serve the remaining term of community supervision in prison.

*CW*

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4. **STATUTORY SENTENCING PROVISIONS:** None

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5. **RESTITUTION:** Defendant agrees to pay restitution to all the victims named in the original Indictment or Information, even if they are not named within the specific charge to which Defendant is pleading guilty. Defendant understands s/he is jointly and severally liable for the entire restitution amount(s). Defendant specifically agrees to make restitution to the victim(s) for losses suffered as a result of the course of conduct of which Defendant may only be a part. *Restitution to be left open for 60 days from Sentencing.*

*CW*

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6. **DEFERRED JAIL TIME:** If Defendant is sentenced to probation, Defendant shall be incarcerated in the Cochise County jail for a period of thirty (30) days. This period of incarceration will be deferred during any and all periods of time during which Defendant is fully compliant with the terms and conditions of probation. Up to fourteen (14) days at a time of this deferred incarceration may be imposed at any time or times during the term of probation if the Court concludes that Defendant violated any term or condition of probation. Any portion of this deferred incarceration not

1 imposed during the term of probation shall be automatically vacated upon  
2 Defendant's successful completion of probation. CW

3 The Court will determine whether Defendant violated a term or condition of  
4 probation based upon a verified Petition filed by the Cochise County Adult Probation  
5 Department. Defendant will be provided with a copy of any such Petition and will be  
6 provided an opportunity to be heard before the deferred incarceration is imposed.  
7 Defendant hereby waives any right he/she may have to be represented by an attorney  
8 when the Court decides whether to impose this deferred jail time. CW

9 Any violation of probation known to the assigned Adult Probation Officer at the time  
10 the deferred incarceration is imposed shall not subsequently be alleged in any Petition  
11 to Revoke Probation. CW

12 This deferred incarceration is in addition to jail time served by Defendant prior to  
13 sentencing or imposed by the Court at the time of sentencing. CW

- 14 7. **STIPULATION/RECOMMENDATIONS REGARDING SENTENCE:** As to  
15 Count 1, the Defendant shall be incarcerated for the minimum term of 4 years in the  
16 Department of Corrections. CW

- 17 8. **STIPULATION REGARDING FAILURE TO APPEAR:** If the Defendant is  
18 released from custody prior to Sentencing, and s/he fails to appear, the Court shall  
19 disregard the stipulated sentence of Paragraph 7, *supra*, and shall impose no less than  
20 the presumptive term of incarceration for the offense(s) to which the Defendant  
21 pleads guilty. CW

- 22 9. **DISMISSAL OF CHARGES:** The following charges are dismissed or, if not yet  
23 filed, shall not be brought against the Defendant: All remaining counts in the  
24 Indictment.

- 25 10. **PRE-SENTENCE INTERVIEW:** Defendant waives his/her right to remain silent  
during the pre-sentence interview. Defendant will honestly answer all questions from  
the probation officer during, including but not limited to; providing a "Defendant's  
Version" of the crime and surrounding circumstances, Defendant's history of drug and  
alcohol use, and Defendant shall participate fully in substance abuse or other  
screening and testing as requested by the probation officer. The parties agree that if  
Defendant does not fully participate in the pre-sentence interview as agreed herein,  
such failure undermines the Court's ability to assess Defendant's amenability to  
probation supervision, his potential danger to the community, and to determine what  
probation services are necessary to rehabilitate Defendant. For these reasons, the  
parties stipulate that if Defendant does not fully participate in the pre-sentence  
interview as agreed herein, Defendant shall be sentenced to a term of imprisonment  
notwithstanding any other provision of this Plea Agreement. CW

11. **PRISON MANDATORY PLEA:** If this is a prison mandatory plea, pursuant to Rule 7.2(c)(b), the Defendant will be taken into custody at the time of the change of plea, whether or not the plea is accepted at that time. If the defendant is in custody any release conditions shall be revoked at the time. CW
12. **WAIVER OF PROBABLE CAUSE DETERMINATION:** If the Defendant is charged with a felony he hereby gives up his right to a preliminary hearing or other probable cause determination on the charges to which he pleads. In the event the Court rejects the plea, or the Defendant withdraws the plea, the Defendant hereby gives up his right to a preliminary hearing or other probable cause hearing. CW
13. **POSSIBLE COLLATERAL CONSEQUENCE:** If you are not a citizen of the United States, pleading guilty or no contest to a crime may affect your immigration status. Admitting guilt may result in your deportation even if the charge is later dismissed. Your plea or admission of guilt could result in your deportation or removal, could prevent you from ever being able to get legal status in the United States or could prevent you from becoming a United States citizen. CW
14. **AMENDMENT OF CHARGES:** This agreement serves to amend the indictment or information to charge the offense to which the Defendant pleads without the filing of any additional pleading. However, if the plea is rejected by the Court or withdrawn by either party, or if the conviction is subsequently overturned on appeal, the original charges and any charges that are dismissed by reason of this plea agreement are automatically reinstated. CW
15. **WAIVER OF DEFENSES, MOTIONS, ETC.:** Unless this plea is rejected by the Court or withdrawn by either party, the Defendant hereby waives and gives up any and all motions, defense objections, or requests which he had made or raised, or could assert hereafter, to the Court's entry of judgment against her and imposition of a sentence upon him consistent with this agreement. CW
16. **FINDING OF AGGRAVATING OR MITIGATING CIRCUMSTANCE:** By entering into this agreement the Defendant agrees that the Court may find any fact used to impose sentence to be true by a preponderance of the evidence, and that the Court is not bound by the Rules of Evidence in determining what evidence to consider. CW
17. **ACCEPTANCE/REJECTION/WITHDRAWAL OF PLEA:** The parties agree that the Court shall accept this plea at the time of the Defendant's change of plea. The State's participation in this plea agreement is conditioned upon the Court's acceptance of the plea at the change of plea hearing. CW

1 18. If, after accepting the plea, the Court concludes that the agreement is inappropriate  
2 for any reason, including but not limited to, an amendment or reduction of the original  
3 charges, dismissal of charges, withdrawal of allegations pursuant to A.R.S. §§ 13-704,  
4 13-705, 13-708, 13-707.C, 13-901.03, 13-703, 13-703.E-J or 13-703, the Court may  
5 reject the plea. Should the Court reject the plea, the Defendant hereby waives all  
6 claims of double jeopardy and all original charges are automatically reinstated. CN

7 The parties agree that it is the Court's duty to impose sentence upon the Defendant,  
8 and that any sentence stipulated to is not binding on the Court. If the Court concludes  
9 that any of the plea agreement's provisions regarding the sentence or the terms and  
10 conditions of probation are inappropriate, it can reject the plea. If the court rejects the  
11 plea agreement provisions regarding sentencing, both parties shall be given the  
12 opportunity to withdraw from this agreement. However, if neither the State nor the  
13 Defendant elects to withdraw from the agreement, then any sentence stipulated to is  
14 not binding upon the Court, and the Court is bound only by the sentencing limits set  
15 forth in the applicable statutes. Should the Court reject this agreement for any reason,  
16 or the State or Defendant withdraw from the agreement, the Defendant hereby waives  
17 all claims of double jeopardy and all original charges will be automatically reinstated. CN

18 The Defendant understands that by entering this plea, she may withdraw from the  
19 plea only if the court finds that withdrawal is necessary to correct a manifest injustice.  
20 Should the Defendant withdraw from the agreement, the Defendant hereby waives all  
21 claims of double jeopardy and all original charges are automatically reinstated. CN

22 The Defendant agrees that should she be charged with or commit a new crime after  
23 the entry of the plea, the State may withdraw from the agreement. Should the  
24 Defendant be charged with or commit a new crime and the State withdraws from the  
25 plea agreement, the Defendant hereby waives all claims of double jeopardy and all  
original charges are automatically reinstated. CN

18 This agreement is specifically conditioned upon the Defendant having no prior felony  
19 conviction(s) and the State will not be bound by this agreement and may withdraw the  
20 agreement if the Defendant has a prior felony conviction(s). Should the State  
21 withdraw from the agreement, the Defendant hereby waives all claims of double  
22 jeopardy and all original charges are automatically reinstated. CN

22 19. **DISPOSAL OF EVIDENCE:** The Defendant understands that by entering into this  
23 plea agreement, she waives notice of disposition of evidence in the possession of any  
24 law enforcement agency seized or otherwise obtained for use in this case and any case  
25 dismissed according to the terms of this agreement. The Defendant agrees that such  
evidence may be disposed of. The Defendant further understands and agrees that in  
the event this case or any case dismissed according to the terms of this agreement  
goes to trial the evidence may not be available and the State will not be required to



1 introduce such evidence. Nothing in this agreement prohibits either party from  
2 photographing, reproducing, describing, etc. evidence for future use, including trial.

- 3 20. **FORFEITURE OF PROPERTY:** This plea agreement does not affect in any way  
4 any action to forfeit the Defendant's property pursuant to A.R.S. §§13-2314, 13-3413  
5 or 32-1993, or under §13-4301 et. seq., including any action that may be based on  
6 facts that gave rise to the indictment, whether such action is presently pending or filed  
7 hereafter. CN

8 If a deadly weapon, dangerous instrument or explosive was used, displayed or  
9 unlawfully possessed during the commission of any offense charged in the indictment  
10 or contained in this plea agreement, the Defendant forfeits all ownership interests in  
11 the deadly weapon, dangerous instrument or explosive and the article shall be sold,  
12 destroyed or otherwise properly disposed of. CN

### 13 **WAIVER OF RIGHTS**

14 I understand that by pleading guilty or no contest in a non-capital case I will  
15 waive the right to have the appellate Courts review the proceedings by way of direct  
16 appeal, and I may seek review only by filing a petition for post-conviction relief pursuant to  
17 Rule 32 in this Court and, if denied, a petition for review. CN

18 I understand that by pleading guilty I will be giving up the following  
19 constitutional rights: (a) The right to trial by jury; (b) The right to have a jury determine  
20 beyond a reasonable doubt any fact used to impose sentence within the range set forth  
21 above including aggravating circumstances in accordance with A.R.S. §§13-702.A.B. and  
22 C., 13-703, 13-703.E-J, 13-704, 13-708, 13-901.03 and 13-709.03; (c) The right to the  
23 assistance of an attorney at trial, and to be appointed an attorney, to be furnished free of  
24 charge, if I cannot afford one; (d) The right to confront the witnesses against me and to  
25 cross-examine them as to the truthfulness of their testimony; (e) The right to present  
evidence on my own behalf and to have the State compel witnesses of my choosing to  
appear and testify; (f) The right to remain silent and to be presumed innocent until proven  
guilty beyond a reasonable doubt; (g) The right to a direct appeal. CN

The defendant and Counsel each agree that there is no known reason at this  
time to believe that a mental health examination or diagnostic evaluation pursuant to  
Criminal Rule 26.5 is necessary or helpful. CN

I agree to enter my plea as indicated above on the terms and conditions set  
forth herein. CN

I have read and understand the above. I have discussed the case and my  
constitutional rights with my lawyer. CN

1 I have personally and voluntarily signed the signature line below to indicate I read  
2 and approved all of the previous paragraphs in this agreement, both individually and as a total  
3 agreement.

4 Defendant Clarence Wall Date 1-14-19  
5 **CLARENCE WALL**

6 I have discussed this case with my client in detail and advised him of his  
7 constitutional rights and possible defenses. I believe that the plea and disposition set forth herein  
8 are appropriate under the facts of this case. I concur in the entry of the plea as indicated above  
9 and on the terms and conditions set forth herein.

10 Defense Counsel [Signature] Date 1-14-19  
11 **Rich. Karwaczka, Esq.**

12 I have reviewed this matter and concur that the plea and disposition set forth  
13 herein are appropriate and are in the interests of justice.

14 Prosecutor [Signature] Date 01/14/19  
15 **Michael A. Powell, Deputy County Attorney**